

§ 125.17 Who decides if a contract opportunity for SDVO competition exists?

The contracting officer for the contracting activity decides if a contract opportunity for SDVO competition exists.

§ 125.18 What requirements are not available for SDVO contracts?

A contracting activity may not make a requirement available for a SDVO contract if:

(a) The contracting activity otherwise would fulfill that requirement through award to Federal Prison Industries, Inc. under 18 U.S.C. 4124 or 4125, or to Javits-Wagner-O'Day Act participating non-profit agencies for the blind and severely disabled, under 41 U.S.C. 46 *et seq.*, as amended; or

(b) An 8(a) participant currently is performing that requirement or SBA has accepted that requirement for performance under the authority of the section 8(a) program, unless SBA has consented to release of the requirement from the section 8(a) program.

§ 125.19 When may a contracting officer set-aside a procurement for SDVO SBCs?

(a) The contracting officer first must review a requirement to determine whether it is excluded from SDVO contracting pursuant to § 125.18.

(b) If the contracting officer determines that § 125.18 does not apply, the contracting officer should consider setting aside the requirement for 8(a), HUBZone, or SDVO SBC participation before considering setting aside the requirement as a small business set-aside.

(c) If the CO decides to set-aside the requirement for competition restricted to SDVO SBCs, the CO must:

(1) Have a reasonable expectation that at least two responsible SDVO SBCs will submit offers; and

(2) Determine that award can be made at fair market price.

§ 125.20 When may a contracting officer award sole source contracts to SDVO SBCs?

A contracting officer may award a sole source contract to an SDVO SBC

only when the contracting officer determines that:

(a) None of the provisions of §§ 125.18 or 125.19 apply;

(b) The anticipated award price of the contract, including options, will not exceed:

(1) \$5,000,000 for a requirement within the NAICS codes for manufacturing, or

(2) \$3,000,000 for a requirement within all other NAICS codes;

(c) A SDVO SBC is a responsible contractor able to perform the contract; and

(d) Contract award can be made at a fair and reasonable price.

§ 125.21 Are there SDVO contracting opportunities at or below the simplified acquisition threshold?

Yes, if the requirement is at or below the simplified acquisition threshold, the contracting officer may set-aside the requirement for consideration among SDVO SBCs using simplified acquisition procedures or may award a sole source contract to an SDVO SBC.

§ 125.22 May SBA appeal a contracting officer's decision not to reserve a procurement for award as an SDVO contract?

The Administrator may appeal a contracting officer's decision not to make a particular requirement available for award as an SDVO sole source or a SDVO set-aside contract at or above the simplified acquisition threshold.

§ 125.23 What is the process for such an appeal?

(a) *Notice of appeal.* When the contracting officer rejects a recommendation by SBA's Procurement Center Representative to make a requirement available for award as an SDVO contract, he or she must notify the Procurement Center Representative as soon as practicable. If the Administrator intends to appeal the decision, SBA must notify the contracting officer no later than five business days after receiving notice of the contracting officer's decision.

(b) *Suspension of action.* Upon receipt of notice of SBA's intent to appeal, the contracting officer must suspend further action regarding the procurement until the Secretary of the department or head of the agency issues a written

decision on the appeal, unless the Secretary of the department or head of the agency makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract.

(c) *Deadline for appeal.* Within 15 business days of SBA's notification to the CO, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

(d) *Decision.* The Secretary of the department or head of the agency must specify in writing the reasons for a denial of an appeal brought under this section.

Subpart D—Protests Concerning SDVO SBCs

SOURCE: 69 FR 25269, May 5, 2004, unless otherwise noted.

§ 125.24 Who may protest the status of an SDVO SBC?

(a) *For Sole Source Procurements.* SBA or the contracting officer may protest the proposed awardee's service-disabled veteran status.

(b) *For Competitive Set-Asides.* Any interested party may protest the apparent successful offeror's SDVO SBC status.

§ 125.25 How does one file a service disabled veteran-owned status protest?

(a) *General.* The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether an eligible SDVO SBC is a "small" business for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests both the size of the SDVO SBC and whether the concern meets the SDVO SBC requirements set forth in § 125.15(a), SBA will process each protest concurrently, under the procedures set forth in part 121 of this chapter and this part. SBA does not review issues concerning the administration of an SDVO contract.

(b) *Format.* Protests must be in writing and must specify all the grounds

upon which the protest is based. A protest merely asserting that the protested concern is not an eligible SDVO SBC, without setting forth specific facts or allegations is insufficient. *Example:* A protester submits a protest stating that the awardee's owner is not a service-disabled veteran. The protest does not state any basis for this assertion. The protest allegation is insufficient.

(c) *Filing.* An interested party, other than the contracting officer or SBA, must deliver their protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period) to the contracting officer. The contracting officer or SBA must submit their written protest directly to the Associate Administrator for Government Contracting.

(d) *Timeliness.* (1) For negotiated acquisitions, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.

(2) For sealed bid acquisitions, an interested party must submit its protest by close of business on the fifth business day after bid opening.

(3) Any protest submitted after the time limits is untimely, unless it is from SBA or the CO.

(4) Any protest received prior to bid opening or notification of intended awardee, whichever applies, is premature.

(e) *Referral to SBA.* The contracting officer must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The contracting officer must send all protests, along with a referral letter, directly to the Associate Administrator for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or by fax to (202) 205-6390, marked Attn: Service-Disabled Veteran Status Protest. The CO's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation number; the name, address, telephone number and facsimile number of the